

**COMMONWEALTH OF KENTUCKY
BOARD OF TAX APPEALS
FILE NO. K14-R-17**

RENT-A-CENTER EAST, INC.; AND

RENT-WAY, INC.

APPELLANTS

V.

**FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE**

APPELLEE

FINAL ORDER NO. K-25136

This case was heard by Chairman Cecil Dunn, and Board members Lindy Karns and Lanola Parsons on October 21, 2015. The parties filed post-hearing briefs. On April 27, Chairman Marcus Carey and Board member Carlo Wessels were appointed and replaced Mr. Dunn and Ms. Karns on the Board. Furthermore, Lanola Parsons is no longer serving on the Board, having been replaced by Jessica Burke, upon her recent appointment.

Accordingly, former Board member Parsons (“Hearing Officer”), who originally heard the case, was requested by this Board to prepare and issue a recommended decision in accordance with KRS 13B. 110 and KRS 131.355(2). The full Board has reviewed the case, the recommended decision, and the exceptions to the recommended disposition filed by Taxpayer/Appellant. The Board having reviewed the record and being otherwise sufficiently advised, finds the exceptions to be persuasive and rejects the recommended disposition of the Hearing Officer and issues this Final Order, which reverses the Final Ruling issued by the Department of Revenue.

BACKGROUND

The Appellants are rent-to-own companies that rent and sell household goods such as furniture, appliances, electronics and computers to its customers in Kentucky and outside of Kentucky. In order to rent or purchase tangible personal property, a customer executes a Rental Purchase Agreement and pays a rental purchase fee. The taxpayers collected sales tax on the amount of the rental purchase fee. This case involves the assessment of sales tax on an “Optional Liability Waiver Provision,” offered to renters of tangible property for the years 2007-2011. The taxpayer appeals from the audit and final ruling, which upheld an assessment of \$557,000, plus applicable interest and penalties.

The Rental Purchase Agreement provides that the customer is responsible “for the fair market value of the property if it is lost, stolen, damaged or destroyed.” (Joint Ex. 17) The customer, however, has the choice at the signing of the rental agreement, whether to purchase an optional damage waiver agreement designed to cover much of a customer’s potential liability for losses, and in consideration thereof, the customer pays a separately stated waiver fee in addition to the renter’s weekly, semi-monthly or monthly rental payment. (Joint Ex. 18) This additional, optional “waiver fee” is then added to the original rental/purchase agreement.

The Department determined that the waiver fees were taxable. In two prior audits, it had not picked up these fees. DOR argues that these fees are a part of the taxpayers’ gross receipts from the lease or rental of tangible personal property and that there is no stated statutory exclusion for the fees. The taxpayers do not suggest that the “waiver fees” enjoy a specific exclusion under the sales tax statutes. Rather, the taxpayers argue that the “waiver fees” relate to intangible personal property and therefore are not subject to sales tax. In other words, the

taxpayers challenge the imposition of the tax in the first place.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The full board finds that KRS 139.200(1)(a) imposes a sales tax on all retailers at the rate of six percent (6%) on the gross receipts derived from retail sales of tangible personal property.

Tangible personal property is defined in KRS 139.010(33), and the Board finds that the waiver agreement, for which a separately stated fee is charged, is not tangible personal property as defined by Kentucky law. Furthermore, the taxpayers correctly pointed out in their exceptions to the recommended order that the Department of Revenue conceded that the waivers at issue are not tangible property. Therefore, since the waiver agreement is not tangible personal property (but rather an intangible), the fees paid for it are not subject to sales tax.

Tax imposition statutes must be construed narrowly. The taxpayers having met their burden of proof, the claims presented on appeal are sustained. Final Ruling No. 2014-28 is reversed.

FINAL ORDER

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. The Board's statute, KRS 131.370(1), provides that the Circuit Court of venue for any party aggrieved by any final order of the Kentucky Board of Tax Appeals, except on appeals from a county board of assessment appeals, is the Franklin Circuit Court or the Circuit Court of the county in which the party aggrieved resides or conducts his place of business.

Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

DATE ORDER ENTERED: SEPTEMBER 6, 2016

BOARD OF TAX APPEALS FULL BOARD CONCURRING

MARCUS CAREY, CHAIR